IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (BAIL) NO. 55 OF 2007

MR. DESMOND THOMAS HOPE PRESENTLY IN JUDICIAL LOCK UP ....Appellant

Versus

STATE OF GOA REPRESENTED BY THE POLICE INSPECTOR ....Respondent

Mr. Arun Bras D' Sa, Advocate for the Applicant/Accused.
Ms. Winnie Coutinho, Public Prosecutor for the State.

Coram:- N. A. BRITTO, J.

Date:- 15th March, 2007

P.C.

Heard learned Counsel on behalf of the applicant and learned Public Prosecutor on behalf of the respondent.

2. The applicant is an accused who has been arrested on 19.02.2007, in connection with investigations in Crime No. 8/07 under Section 377 I.P.C. and since then, he is in judicial custody. The applicant approached the Court of Sessions for bail but his application came to be rejected by Order dated 07.03.2007 and, as such, the applicant has approached this Court for bail.

3. The facts alleged on behalf of the Respondent show that on 19.02.2007, when PSI Rebello of Colva Police Station was on night patrolling duty, he saw the applicant, aged 32 years and one Anwar @ Imran son of Rehman Shaikh, aged 24 years, both adults, in compromising position and both holding each other's private parts and both were brought to the Police Station and after being brought to the Police Station, the said Anwar @ Imran, is said to have disclosed the

commission of unnatural sexual assault/abuse, by the applicant by introducing his penis into the mouth of the said Anwar @ Imran, which he allows it to be done with the hope that he would get a job abroad from the applicant. The statement of the said Anwar @ Imran Shaikh shows that he resides at the Housing Board Colony at Gogol, and that they met for the first time in April, 2006, and thereafter met several times. The statement also shows that the applicant had oral sex with him on 18.02.2007 after he was called first to Colva Beach and thereafter to Monti Dongor at Colva. It is true that the said Anwar @ Imran Shaikh has stated that on 18.02.2007, he obliged the accused because he threatened him that he would not be provided a job, abroad. The incident of 19.02.2007 followed thereafter.

4. Basically, it appears that both the parties were adults and were consenting parties to the offence under Section 377 I.P.C., and if that is so, the punishment provided for the said offence could not be severe. On behalf of the respondent, it is stated that the applicant being a foreigner, will abscond or conceal himself, in case if he is released on bail. This aspect can be taken care of by imposing suitable condition.

5. The learned Additional Sessions Judge has concluded that in case the applicant is released on bail, there is every possibility that the applicant will continue to commit such offences. The learned Additional Sessions Judge has also observed that the said Anwar was being called by the applicant on several occasions on his brother's mobile. Here it may be stated that the said Anwar, in case he is not willing, he is always free not to attend the calls of the applicant and oblige him by going to places where he is called and therefore, the observation that the applicant, if released on bail will continue to commit such offences and pose a threat to Society, appears to be unfounded. No doubt Section 377 IPC is under challenge, but it is still on the Statute Book. However, it cannot be said that the offence committed is grave and punishment provided for it would be severe, so as to deprive bail to the applicant.

6. Considering the facts and circumstances reproduced hereinabove, this would be a fit case to admit the applicant to bail on the following conditions:

(i) The applicant shall be released upon execution of a bond of Rs.25,000/- with one surety in the likeamount to the satisfaction of the learned J.M.F.C., Margao.

(ii) The applicant shall deposit his Passport before the Investigation Officer and the latter shall inform the Embassy of the accused that the Passport is retained by him, further requesting the said Embassy that he should not be issued a duplicate Passport.

The application is allowed on the above terms.

Expedite authenticated copy.

N. A. BRITTO, J.

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